

## **EXHIBIT L**

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[ADDITIONAL PARTIES AND COUNSEL  
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

Pacific Gas and Electric Company, Southern  
California Edison Company, and California  
Electricity Oversight Board,

Plaintiffs,

v.

Arizona Electric Power Cooperative, Inc.; City of  
Anaheim; City of Azusa; City of Banning; City of  
Burbank; City of Glendale; City of Los Angeles;  
City of Pasadena; City of Riverside; City of Santa  
Clara; City of Seattle; City of Vernon; Eugene  
Water and Electric Board; Los Angeles Department  
of Water and Power; Modesto Irrigation District;  
Northern California Power Agency; Public Utility  
District No. 2 of Grant County; Sacramento  
Municipal Utility District; Salt River Project  
Agricultural Improvement and Power District; and  
Turlock Irrigation District,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND/OR  
RESTITUTION AND DECLARATORY  
RELIEF AND JURY DEMAND**

**COMPLAINT FOR DAMAGES AND/OR RESTITUTION AND DECLARATORY RELIEF  
AND JURY DEMAND**

Plaintiffs hereby demand trial by jury of all issues properly triable thereby.

1 Plaintiffs Pacific Gas and Electric Company ("PG&E"), Southern California Edison  
2 Company ("SCE"), and the California Electricity Oversight Board ("EOB") (collectively, "the  
3 California Parties") allege:

4 **JURISDICTION**

5 1. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331. Plaintiffs'  
6 claims require resolution of a disputed and substantial issue of federal law in that plaintiffs' claims  
7 arise out of defendants' sales of electric power in wholesale electricity markets that are within the  
8 Federal Energy Regulatory Commission's ("FERC") exclusive regulatory jurisdiction, and  
9 plaintiffs are suing to recover for defendants' breaches of their contractual obligations contained in  
10 tariffs filed with and regulated by FERC.

11 **SUMMARY**

12 2. This is an action for damages and declaratory relief against the following defendants:  
13 Arizona Electric Power Cooperative, Inc.; City of Anaheim; City of Azusa; City of Banning; City  
14 of Burbank; City of Glendale; City of Los Angeles; City of Pasadena; City of Riverside; City of  
15 Santa Clara; City of Seattle (Seattle City Light Department); City of Vernon; Eugene Water and  
16 Electric Board; Los Angeles Department of Water and Power; Modesto Irrigation District; Northern  
17 California Power Agency; Public Utility District No. 2 of Grant County; Sacramento Municipal  
18 Utility District; Salt River Project Agricultural Improvement and Power District; and Turlock  
19 Irrigation District (collectively, "the Governmental Entities"). PG&E and SCE's (the "California  
20 IOUs") claims in this action arise out of their wholesale purchases of electric power and ancillary  
21 services (hereinafter "electric power") and the Governmental Entities' sales of electric power in the  
22 California wholesale electric power markets from May 1, 2000 through June 20, 2001. The  
23 California wholesale markets were operated by the California Independent System Operator  
24 Corporation ("ISO") and California Power Exchange Corporation ("PX") under tariffs filed with  
25 and approved by the FERC.

26 3. The Governmental Entities' voluntary sales of electric power into the California  
27 wholesale markets pursuant to the ISO and PX tariffs and pursuant to certain written agreements  
28 gave rise to binding contractual obligations owed by the defendants to the other market participants,

1 including the California IOUs. The California IOUs are direct parties to and expressly intended  
2 beneficiaries of the Governmental Entities' contractual obligations. The Governmental Entities  
3 have breached their contractual obligations, entitling the California IOUs to the relief requested in  
4 this Complaint.

5 4. FERC has determined that sellers in the California wholesale electric markets charged  
6 rates that were unjust, unreasonable, and unlawful. Pursuant to the tariffs governing those markets,  
7 FERC has corrected and reduced the rates that all sellers, including the Governmental Entities, were  
8 entitled to charge for those sales for the period October 2, 2000 through June 20, 2001 ("the Refund  
9 Period"). To correct the harm caused by the unlawful prices, FERC ordered all sellers in the  
10 California markets to pay refunds for their unlawful overcharges. On September 6, 2005, however,  
11 the Ninth Circuit Court of Appeals ("Ninth Circuit") held that FERC's statutory refund authority  
12 did not extend to the Governmental Entities. The Ninth Circuit's order put the Governmental  
13 Entities in a unique position among ISO and PX market participants in that they alone may seek to  
14 benefit from refunds paid by others while escaping liability for their own unlawful overcharges.  
15 The Ninth Circuit noted, however, that market participants could bring claims in court directly  
16 against the Governmental Entities to enforce the contractual obligations created by FERC tariffs  
17 and related agreements under which the Governmental Entities sold power in the ISO and PX  
18 markets. Thus, the Governmental Entities are now contractually obligated to reimburse the  
19 California IOUs for the difference between the rates that the Governmental Entities charged during  
20 the Refund Period and the lawful, corrected rates under the tariffs.

21 5. Amounts recovered by the California Parties will ultimately benefit California  
22 ratepayers in the manner determined by the California Public Utilities Commission ("CPUC").

### 23 PARTIES

24 6. PG&E is a corporation formed under the laws of the State of California with its  
25 principal place of business in San Francisco, California. PG&E is a subsidiary of PG&E  
26 Corporation. PG&E is engaged in the purchase, transmission, distribution and sale of electric  
27 power to the public at wholesale and retail within the State of California, and is a "public utility"  
28 within the meaning of the California Public Utilities Code and the Federal Power Act ("FPA").

1 PG&E provides retail electric service to approximately 4.9 million customers in Northern and  
2 Central California.

3 7. SCE is a corporation formed under the laws of the State of California with its principal  
4 place of business in Rosemead, California. SCE is a subsidiary of Edison International. SCE is  
5 engaged in the purchase, transmission, distribution and sale of electric power at wholesale and retail  
6 within the State of California, and is a "public utility" within the meaning of the California Public  
7 Utilities Code and the FPA. SCE provides retail electric service to approximately 4.6 million  
8 customers in a 50,000 square-mile area of Central, Coastal, and Southern California, excluding the  
9 City of Los Angeles and certain other cities.

10 8. The EOB was created by California statute to oversee the ISO and PX, and to  
11 "investigate any matter related to the wholesale market for electric power to ensure that the interests  
12 of California's citizens and consumers are served, protected, and represented in relation to the  
13 availability of electric transmission and generation and related costs, during periods of peak  
14 demand." Cal. Pub. Util. Code § 335. The EOB joins this action pursuant to its statutory authority  
15 to sue and to participate in all proceedings relevant to the purposes of the electricity restructuring  
16 provisions in the California Public Utilities Code, Cal. Pub. Util. Code §§ 330-398.5.

17 9. Defendant Arizona Electric Power Cooperative, Inc. ("AEP CO") is a rural electric  
18 generation and transmission cooperative incorporated in Arizona with its principal place of business  
19 in Benson, Arizona. AEP CO provides its generation and transmission services to member  
20 distribution cooperatives located in Arizona and California, and is registered to do business in  
21 California.

22 10. Defendants the City of Anaheim; the City of Azusa; the City of Banning; the City of  
23 Burbank; the City of Glendale; the City of Los Angeles; the City of Pasadena; the City of  
24 Riverside; the City of Santa Clara; and the City of Vernon are California cities.

25 11. Defendant City of Seattle (Seattle City Light Department) is a city located in the State  
26 of Washington.

27 12. Defendant Eugene Water and Electric Board ("EWEB") is a municipal utility located  
28 in Eugene, Oregon.

1 13. Defendant Los Angeles Department of Water and Power ("LADWP") is a municipal  
2 utility and a proprietary department of the City of Los Angeles located in Los Angeles, California.

3 14. Defendant Modesto Irrigation District is a California irrigation district located in  
4 Modesto, California.

5 15. Defendant Northern California Power Agency is a California agency located in  
6 Roseville, California that assists municipalities, rural electric cooperatives, irrigation districts, and  
7 other publicly owned entities with the purchase, aggregation, scheduling, and management of  
8 electric power.

9 16. Defendant Public Utility District No. 2 of Grant County ("Grant County PUD") is a  
10 public utility district located in Ephrata, Washington.

11 17. Defendant Sacramento Municipal Utility District is a municipal electric utility located  
12 in Sacramento, California.

13 18. Defendant Salt River Project Agricultural Improvement and Power District ("Salt  
14 River Project") is an agricultural improvement district located in the State of Arizona.

15 19. Defendant Turlock Irrigation District is a California irrigation district located in  
16 Turlock, California.

17 20. All defendants engage or engaged in the business of wholesale and/or retail  
18 generation, transmission, distribution, purchase and/or sale of electric power in California and, in  
19 particular, voluntarily elected to transact sales in the ISO and PX markets during the relevant time  
20 period.

21 **PERSONAL JURISDICTION AND VENUE**

22 21. Personal jurisdiction is proper in this district over each Governmental Entity because  
23 each Governmental Entity has made sales of electric power in this district, because this controversy  
24 arises out of each Governmental Entity's sales of electric power within this district, and because  
25 each Governmental Entity has consented to the jurisdiction of this Court in connection with this  
26 action pursuant to ISO Tariff § 20.7 and/or PX Tariff § 19.6, as to which the Governmental Entities  
27 agreed to be bound.



22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because defendants are subject to personal jurisdiction in this district and therefore are deemed to reside in this district, because a substantial part of the events or omissions on which the claims are based occurred in this district, and because this is a district wherein an act or transaction constituting the violation occurred. Venue is also proper in this district pursuant to ISO Tariff § 20.7 and/or PX Tariff § 19.6, as to which the Governmental Entities agreed to be bound.

### **COMMON ALLEGATIONS**

23. The California IOUs' claims arise out of the Governmental Entities' sales of electric power from May 1, 2000 through June 20, 2001, in wholesale markets operated by the ISO and PX under tariffs filed with FERC. FERC has determined that all sellers in those markets charged rates that were unjust, unreasonable, and unlawful and, pursuant to the tariffs governing those markets, has corrected and reduced the rates that all sellers, including the Governmental Entities, were entitled to charge for various sales during the Refund Period. As a result of FERC's modification of the tariffs, the Governmental Entities are now contractually obligated to reimburse the California IOUs for the difference between the rates that the Governmental Entities charged and the lawful, corrected rates.

### **The ISO and PX Markets**

24. In 1996, California enacted Assembly Bill 1890 ("AB 1890") to restructure California's electric power markets in order to facilitate the development of competition for the generation and sale of electric power. AB 1890 separated the California utilities' vertically integrated generation, transmission, and distribution functions into unbundled functions. PG&E and SCE divested themselves of a substantial portion of their generation facilities. Under applicable California law, all California investor-owned utilities, including the California IOUs, were required to supply electric power to all retail customers that did not affirmatively elect to purchase electric power elsewhere.

25. AB 1890 provided for the creation of two new wholesale market institutions to facilitate the buying and selling of electric power: the ISO and the PX, which are non-profit, public

1 benefit corporations organized under California law, and subject to the exclusive regulatory  
2 jurisdiction of the FERC.

3 26. Under rules promulgated by the CPUC and approved by FERC, the California IOUs  
4 were required, in general, to purchase through the ISO and the PX substantially all of the wholesale  
5 electric power that they needed to provide service to their retail customers, including electric energy  
6 and associated reserves and other ancillary services. Ancillary services are services such as reserve  
7 generating capacity that are necessary to maintain the reliability of the transmission of electricity  
8 from generators to customers. Other entities, including the Governmental Entities, were permitted  
9 voluntarily to buy or sell electric power in the ISO and/or PX markets.

10 27. The ISO and PX are "public utilities" under the FPA, and are therefore subject to  
11 FERC's jurisdiction. During all relevant times, all sales and purchases in the ISO and PX markets  
12 were required to be made pursuant to tariffs filed with and approved by FERC that prescribed the  
13 terms and conditions of, and contained formulas used to establish prices for, all transactions in these  
14 markets. The ISO and PX Tariffs are the legal equivalent of federal regulations and also establish  
15 contractual obligations among the market participants, prescribing the rules, requirements and  
16 pricing formulas for all transactions in the ISO and PX markets.

17 28. The PX was created to function as California's principal power market. The PX acted  
18 as a clearinghouse for daily and hourly markets and submitted schedules of electric power to the  
19 ISO in which scheduled generation for the following day equaled scheduled demand. Pursuant to  
20 the PX Tariff, sellers in the PX market — including the Governmental Entities — submitted offers  
21 to sell electric power, and purchasers submitted demand bids for the quantity of electric power that  
22 they wanted to buy. The PX conducted day-ahead and same-day auctions that allowed parties to  
23 adjust their hourly commitments based on changing needs and availability. Under its tariff, the PX  
24 was charged with responsibility for, among other things, settling energy trades between PX market  
25 participants and preparing and distributing to PX market participants invoices reflecting the  
26 amounts payable and receivable by them in connection with their trading through the PX.

27 29. In general, the PX determined, for each hour in each of the markets that it operated, a  
28 single market-clearing price that all electric power suppliers were paid under the auction provisions



1 of the PX Tariff. The PX matched offers to buy and sell beginning with the lowest-priced bids and  
2 continuing up to the highest-priced bids until the amount of power accepted matched the amount  
3 sought by purchasers at that price. The price of the last (and therefore the highest-priced) accepted  
4 bid set the price for the entire market. All sellers of electric power in a given auction received the  
5 same market-clearing price, even if the seller had offered to sell at a lower price. Thus, any  
6 distortions that inflated the market-clearing price affected the prices received by each and every  
7 seller in the market, including the Governmental Entities.

8 30. Although the role of the ISO has changed over time, it was created as the entity  
9 responsible for operating and maintaining California's electric transmission grid, including  
10 resolving transmission congestion and purchasing electric power to maintain system reliability. To  
11 meet these obligations, the ISO operated, and still operates, wholesale markets for real-time energy  
12 purchases and ancillary services.

13 31. In general, in operating its real-time market, the ISO set a single market-clearing price  
14 based on bids submitted by sellers pursuant to the ISO Tariff. As in the PX market, every seller in  
15 the ISO market received the same market-clearing price set by the ISO for any given interval, even  
16 if a seller had offered to sell at a lower price.

17 32. Thus, the PX operated a day-ahead and a day-of market intended to supply the electric  
18 power needed to meet electric power demand as projected before the operating hour. The ISO  
19 accepted the PX schedules, then procured electric power needed to make the necessary adjustments  
20 in real time in order to ensure that the electric grid operated properly and safely. The ISO also  
21 charged market participants, including the California IOUs, for these products and services  
22 pursuant to its FERC-approved tariff. Ultimately, as a result of market dysfunction and  
23 manipulation, and resulting power shortages, vast quantities of electric power were purchased and  
24 sold through the ISO market during the relevant time period.

25 33. In order to obtain sufficient electric power to maintain reliability of California's  
26 electric grid, the ISO at times was required to procure electric power through mechanisms other  
27 than its regular auction. During the period at issue, the ISO was often forced to solicit such  
28 emergency electric power, known as "out-of-market" or "OOM" electric power, to meet the State's

1 demand for electric power. The ISO Tariff permitted the ISO to solicit this electric power through  
2 extraordinary means, such as telephone calls to electric power marketers and generators, including  
3 the Governmental Entities. These purchases were subject to certain price caps applicable in the  
4 ISO markets, which price caps varied during the relevant period and were intended to prevent price  
5 gouging; but suppliers of OOM electric power regularly demanded more than the FERC-approved  
6 price cap for such sales to the ISO. In order to maintain the reliability of the State's electric grid,  
7 the ISO procured the electric power at whatever price it was offered, even if that price exceeded its  
8 price caps, and then charged market participants, including the California IOUs, for these products  
9 and services.

10 34. The ISO and the PX Tariffs filed with FERC contained the only terms and conditions,  
11 including the pricing formulas, upon which transactions in the ISO and the PX could lawfully be  
12 conducted. The Governmental Entities voluntarily elected to transact sales in the ISO and PX  
13 markets and thereby are charged with knowledge of and are deemed to have accepted the terms of  
14 the Tariffs, which set forth the mutual rights and obligations among market participants. These  
15 obligations may be enforced by market participants against one another.

16 35. In addition, the PX Tariff required all PX market participants, including the  
17 Governmental Entities, to execute a PX Participation Agreement. The PX Participation Agreement  
18 was prescribed by the PX Tariff and provided that, *inter alia*, the PX market participant "will abide  
19 by and will perform all of the obligations under the PX Tariff in respect of all matters set forth  
20 therein including, without limitation, all matters relating to the trading of Energy by it through the  
21 PX market." PX Tariff Appendix A, Participation Agreement, § II(B). The PX Participation  
22 Agreement further provided that "[t]he PX Tariff is incorporated herein and made a part hereof."  
23 PX Tariff Appendix A, Participation Agreement, § 8.

24 36. The ISO Tariff contemplated that each market participant, including Governmental  
25 Entities, would execute an ISO Scheduling Coordinator Agreement. The Scheduling Coordinator  
26 Agreement was prescribed by the ISO Tariff and provided that, *inter alia*, the ISO Scheduling  
27 Coordinator "will abide by, and will perform all of the obligations under the ISO Tariff placed on  
28 Scheduling Coordinators in respect of all matters set forth therein including, without limitation, all

1 matters relating to the scheduling of Energy and Ancillary Services on the ISO controlled grid, . . .  
2 [and] billing and payments . . .” ISO Tariff Appendix B, Scheduling Coordinator Agreement, §  
3 2(B). The Scheduling Coordinator Agreement further provided that “[t]he ISO Tariff is  
4 incorporated herein and made a part hereof.” ISO Tariff Appendix B, Scheduling Coordinator  
5 Agreement, § 8.

6 37. Many market participants both bought and sold electric power in the ISO and PX  
7 markets during the relevant time period. As a prerequisite to trading in the ISO and PX markets,  
8 the tariffs provided that all market participants would be required to meet stated collateral  
9 requirements in the ISO and PX to ensure that they would meet their obligations to the other market  
10 participants arising from their purchases and sales.

11 38. Each month during the relevant time period, the ISO and the PX calculated the total  
12 amount of electric power supplied and purchased by each market participant, including the  
13 Governmental Entities. The ISO and the PX then issued individual billing statements, invoices, and  
14 supporting data, specifying amounts due to or from each market participant.

15 39. The California IOUs, as market purchasers, are counterparties to sales by  
16 Governmental Entities in the ISO and PX markets and have standing to enforce the Governmental  
17 Entities’ contractual obligations under the ISO and PX Tariffs and related agreements. The ISO  
18 and the PX operated as revenue-neutral clearinghouses, and were not themselves counterparties to  
19 any market transactions.

20 40. Under their respective tariffs, the ISO and the PX pass through liability for market  
21 shortfalls to market participants, including the California IOUs, that bought or sold power in the  
22 markets during the period for which there is a shortfall of funds. A market shortfall may result if  
23 one market participant defaults on a payment, causing a shortage of total funds collected by either  
24 the ISO or the PX for distribution to the other market participants. An entity that fails to pay its bill  
25 becomes responsible for a market shortfall, and is deemed an “ISO Debtor” or a “PX Debtor.” An  
26 entity that is owed money because of the market shortfalls is deemed an “ISO Creditor” or “PX  
27 Creditor,” with the right to enforce its contractual right to payment against an ISO or PX Debtor.

1           41. In summary, the ISO and PX Tariffs provided the mechanisms through which electric  
2 power was bought and sold by market participants, with the ISO and the PX acting as  
3 clearinghouses for electric power bought and sold by market participants, holding collateral for  
4 market participants, and settling the accounts of all market participants.

5                   **FERC's Exclusive Jurisdiction Over the ISO and PX Tariffs**

6           42. Because the ISO and the PX are "public utilities" under the FPA, 16 U.S.C. § 824(e),  
7 the tariffs under which they operate were filed with and approved by FERC, and are subject to  
8 FERC's exclusive jurisdiction, continual oversight and regulation. These tariffs were subject to  
9 amendment or revision by FERC, and, in fact, FERC repeatedly revised them during the relevant  
10 time period.

11           43. As entities regulated by FERC, the ISO and the PX were not permitted to act on any  
12 terms or conditions other than those contained in the ISO and PX Tariffs. The ISO and PX Tariffs  
13 required each participant in the ISO and PX markets to comply with all rules, conditions and  
14 provisions of the ISO and PX Tariffs.

15           44. Pursuant to the FPA, FERC has exclusive authority to regulate wholesale sales of  
16 electric power to ensure, among other things, that the rates charged are just, reasonable, and lawful.  
17 FERC thus has exclusive authority to regulate the rates, terms, and conditions of sales made under  
18 the ISO and PX Tariffs and to recalculate and correct such rates, terms, and conditions if FERC  
19 determines that they are not just, reasonable, and lawful. The ISO and PX Tariffs provide that  
20 parties retain the right to petition FERC to review rates charged under the tariffs and provide for  
21 recalculation of charges and resettlement of the accounts of buyers and sellers under the tariffs in  
22 the event that FERC determines that any rates charged under the tariffs were unjust, unreasonable,  
23 or otherwise unlawful, and thus subject to correction.

24           45. By voluntarily electing to sell electric power in the ISO and PX markets, the  
25 Governmental Entities agreed to be bound by the provisions of the ISO and PX Tariffs and any  
26 modifications thereof, including FERC's orders correcting the rates that sellers could lawfully  
27 charge for sales governed by those tariffs. Almost all of the Governmental Entities also executed  
28 written contracts, including ISO Scheduling Coordinator Agreements, and/or PX Participation

1 Agreements, and/or other agreements with the ISO or PX, expressly agreeing to abide by the  
2 provisions of the ISO and/or PX Tariffs. The California IOUs are direct parties to and expressly  
3 intended beneficiaries of the Governmental Entities' contractual obligations. Because the tariffs are  
4 subject to FERC's exclusive jurisdiction, all market participants, including the Governmental  
5 Entities, recognized that FERC would exercise its regulatory authority over the tariffs. If the price  
6 charged by sellers was found by FERC to be unjust and unreasonable or otherwise unlawful, all  
7 market sellers were contractually bound to refund or credit to purchasers the difference between the  
8 price charged and the lawful, corrected rate determined by FERC. Thus, all market participants  
9 were contractually bound to honor the terms and conditions of the tariffs, as revised by FERC, and  
10 these terms and conditions can be contractually enforced by the market participants against one  
11 another. The Governmental Entities' obligation to refund or credit their unlawful overcharges is the  
12 same obligation owed by all sellers in the ISO and PX markets, although the California IOUs'  
13 obligations for their purchases of electric power and other services in the ISO and PX markets  
14 remain under FERC's exclusive jurisdiction.

### 15 **The Power Crisis**

16 46. Beginning in May 2000, the prices demanded by sellers in the ISO and PX markets  
17 rose dramatically and sellers continued to demand unprecedented high prices for over a year,  
18 resulting in rates far in excess of those charged in prior and later periods. As a result of the auction  
19 provisions of the ISO and PX Tariffs, these extremely high prices were charged by all sellers in the  
20 markets, even if individual sellers had offered to sell their power in the auctions at lower prices.  
21 The power crisis had severe negative effects on the stability and financial integrity of the California  
22 IOUs, and ultimately imposed billions of dollars in additional costs on ratepayers, including  
23 business and residential customers throughout the State.

24 47. The first ratepayer impacts of these extraordinarily high prices were felt in the San  
25 Diego area, because San Diego Gas & Electric Company's ("SDG&E's") rates in the summer of  
26 2000 provided for immediate, direct pass-through to ratepayers of the increased wholesale electric  
27 power costs. By January 2001, PG&E and SCE had amassed crippling debt in order to finance the



1 costs of buying electric power, costs that they were not permitted to immediately pass through to  
2 their customers. PG&E and SCE became unable to pay the PX in January 2001.

3 48. The surge in electric power prices also affected the reliability of the electric grid. On  
4 June 14, 2000, electric power consumers in Northern California experienced their first wave of  
5 rolling blackouts. These blackouts foreshadowed the rolling blackouts and near-continuous power  
6 emergencies that California electric customers experienced over the next year.

7 49. The crisis did not subside with the arrival of cooler weather in the fall of 2000.  
8 Although California's peak electric power usage historically declines by roughly 25 to 33 percent  
9 during the cooler months, prices continued to rise throughout the last quarter of 2000 and the first  
10 part of 2001.

11 50. By January 2001, a confluence of events led to the collapse of reliable electric service  
12 in California. At times in January 2001, the ISO ordered rolling blackouts throughout large areas of  
13 California in order to maintain the reliability of the transmission grid. The crisis became a state of  
14 emergency, threatening the safety and welfare of California citizens.

15 51. On December 15, 2000, FERC issued an order eliminating the requirement that the  
16 California IOUs purchase all of their needed electric power through the PX, and the PX ceased  
17 operations of its core markets on January 30, 2001. On or about January 5, 2001, the credit ratings  
18 of PG&E and SCE fell below investment grade, making PG&E and SCE ineligible to purchase  
19 power through the ISO and PX. The State of California was forced to step in as the buyer of last  
20 resort to buy electric power on behalf of the California IOUs to ensure continued service to retail  
21 customers throughout the territories served by the California IOUs. Unrelenting high prices caused  
22 PG&E and SCE to become insolvent.

23 52. The power crisis ultimately ended when FERC, on June 19, 2001, imposed "must-  
24 offer" requirements on electric power generators prohibiting them from withholding generation,  
25 and imposed price caps on wholesale sellers of electric power across all western states effective  
26 June 21, 2001 ("June 19, 2001 Order"). *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 at  
27 62,558, 62,569 (2001). The remedies in the June 19, 2001 Order put an end to the rolling  
28 blackouts, catastrophically high prices, and near-continuous power emergencies.



1           53. The bulk of the crippling costs of the crisis have been passed through to, and paid by,  
2 the residential and commercial ratepayers of the California IOUs. These costs are included in  
3 current rates assessed to customers of the California IOUs, and will continue to be included in rates  
4 until the costs of the crisis have been paid off. By this Complaint, the California IOUs are seeking  
5 to recover from the Governmental Entities the amounts that each Governmental Entity received in  
6 excess of the lawful rates for its wholesale sales of electric power to the California IOUs in the ISO  
7 and PX markets. Amounts recovered by the California IOUs will ultimately benefit California  
8 ratepayers in the manner determined by the CPUC.

9                           **The California Parties Seek Relief From FERC**

10           54. On August 2, 2000, when it became clear that the extremely high wholesale prices  
11 were not returning to the lower levels that had prevailed historically, SDG&E filed a complaint  
12 with FERC under the FPA against all sellers of energy and ancillary services into markets operated  
13 by the ISO and PX. FERC Docket No. EL00-95. PG&E, SCE, and the EOB intervened in that  
14 proceeding on August 14, 2000. The Governmental Entities were also parties to that proceeding.  
15 In that proceeding, the California Parties requested that FERC investigate the justness,  
16 reasonableness, and lawfulness of rates being charged in the California ISO and PX markets and  
17 that FERC order refunds to the extent that FERC determined that sellers had charged unjust,  
18 unreasonable, or otherwise unlawful rates.

19           55. In response to SDG&E's complaint, FERC commenced its own investigation into the  
20 sellers' rates, which it consolidated with SDG&E's complaint. Collectively, the associated  
21 proceedings are referred to as the "Remedy Proceeding." In an order issued July 25, 2001 (the  
22 "July 25, 2001 Order"), FERC ruled that sellers of electric power in the ISO and PX markets  
23 (including the Governmental Entities) had sold electric power at unjust, unreasonable, and unlawful  
24 rates, and that the rates charged in the ISO and PX markets should be corrected for the Refund  
25 Period. FERC Docket No. EL00-98-000. *See San Diego Gas & Electric Co.*, 96 FERC ¶ 61,120  
26 (2001).

27           56. In the July 25, 2001 Order, FERC held: "Our action here establishes a revised method  
28 for calculating the just and reasonable clearing prices to be applied in those markets for the period

1 beginning October 2, 2000. This is pursuant to the Commission's authority under FPA section 206  
2 to fix the just and reasonable rate. Our action thus revises the market clearing prices that all market  
3 participants previously agreed to accept for their sales. In this context, we see no reason to treat  
4 [the Governmental Entities] differently, as they are receiving the same price, the just and reasonable  
5 market clearing price established pursuant to market rules approved by this Commission, that they  
6 expected to obtain for their wholesale sales in the centralized ISO and PX spot markets." July 25,  
7 2001 Order, 96 FERC at 61,512.

8 57. FERC also concluded that, on the record before it, its statutory mandate did not grant  
9 it authority to order refunds for the Summer Period (i.e., May 1, 2000 through October 1, 2000),  
10 and thus denied relief for the Summer Period. FERC also refused to correct the rates for "energy  
11 exchange" transactions (in which blocks of electric power were sold to the ISO for payment in-  
12 kind) and sales to the ISO or the PX of greater than twenty-four hours (i.e., "multi-day" sales under  
13 FERC's definition) made during the Refund Period. *See* July 25, 2001 Order, 96 FERC at 61,499;  
14 *see also San Diego Gas & Electric Co.*, 102 FERC ¶ 61,317 at 62,065 (2003). The California  
15 Parties have appealed to the Ninth Circuit FERC's decisions to limit refunds to the Refund Period  
16 and to certain transactions during the Refund Period, and that appeal is currently pending.

17 58. In order to remedy the unlawful prices charged in the market during the Refund  
18 Period, FERC has, in a series of orders beginning with the July 21, 2005 Order, adopted a  
19 methodology to recalculate, on a market-wide basis, the just and reasonable prices that all sellers  
20 should have received under the ISO and PX Tariffs. In lieu of the auction pricing mechanism  
21 previously provided in the ISO and PX Tariffs, which resulted in unlawful prices, FERC's  
22 methodology effectively revised the ISO and PX Tariffs to determine the corrected, maximum rates  
23 that could be charged under those tariffs. These corrected, maximum rates were called the  
24 "Mitigated Market Clearing Price," or "MMCP." FERC ordered the ISO and PX to apply the  
25 MMCP to sales during the Refund Period, including to OOM sales, in order to recalculate the  
26 charges that all sellers should have received for each interval during the Refund Period in place of  
27 the previous unlawful prices.

1           59. The ISO was ordered to calculate the amounts that sellers were required to refund or  
2 credit to buyers under the July 25, 2001 Order. July 25, 2001 Order, 96 FERC at 61,516. Pursuant  
3 to FERC's direction, the ISO and the PX have recalculated the accounts of all sellers and buyers in  
4 the ISO and PX markets to reflect the corrected rates for the Refund Period in accordance with the  
5 July 25, 2001 Order and the subsequent related FERC orders.

6           60. The California Parties have petitioned the Ninth Circuit for review of the July 25,  
7 2001 Order and subsequent FERC rehearing orders on the ground, *inter alia*, that FERC was also  
8 required to correct the rates for sales made during the Summer Period. That petition for review has  
9 been briefed and argued and is now pending for decision in the Ninth Circuit. *Public Util. Comm'n*  
10 *of Cal. v. Federal Energy Regulatory Comm'n*, Case No. 01-71051, *et al.* The California Parties  
11 have also appealed the July 25, 2001 Order on the ground that FERC was required to correct the  
12 rates for energy exchange transactions and multi-day sales made during the Refund Period. The  
13 California Parties' challenges to FERC's rulings on energy exchanges and multi-day sales are  
14 pending in the Ninth Circuit in the same case.

15           61. The question of relief for the Summer Period and other non-mitigated Refund Period  
16 transactions also was at issue in a second FERC proceeding, separate from the Remedy Proceeding.  
17 In a petition to the Ninth Circuit for review of orders in that FERC proceeding, the Ninth Circuit  
18 held that FERC had erred by concluding that it lacked authority to order refunds for the Summer  
19 Period transactions and for other non-mitigated transactions during the Refund Period, and  
20 remanded the case so that FERC, "in the first instance," could reconsider whether refunds are  
21 appropriate for those transactions. *California, ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1016-18  
22 (9<sup>th</sup> Cir. 2004), *pet. for reh'g pending*.

23                   **Market Manipulation Resulted in Windfall Profits for All Sellers**

24           62. FERC recognized early on that market manipulation could have negatively affected  
25 the California markets. On November 1, 2000, FERC noted that "there is clear evidence that the  
26 California market structure and rules provide the opportunity for sellers to exercise market power  
27 when supply is tight and can result in unjust and unreasonable rates under the [Federal Power Act]." *San Diego Gas & Electric Co.*, 93 FERC ¶ 61,121 at 61,350 (2000) ("November 1 Order").

1           63. FERC initially refused the California Parties' attempts to obtain discovery and  
2 introduce into the Remedy Proceeding evidence of sellers' market manipulation and tariff  
3 violations, but in May 2002, acting in a separate non-public docket, FERC released memoranda that  
4 described how Enron and other sellers had manipulated the ISO and PX markets in order to  
5 increase prices throughout the power crisis. In response, FERC propounded discovery requests to  
6 all sellers in the ISO and PX markets regarding market manipulation. On August 23, 2002, the  
7 Ninth Circuit directed FERC to allow the California Parties to adduce in the Remedy Proceeding  
8 evidence of sellers' market manipulation and tariff violations. As a result of the Ninth Circuit's  
9 order, the California Parties conducted discovery from late 2002 to early 2003 of sellers in the ISO  
10 and PX markets, including the Governmental Entities. That discovery provided evidence of a  
11 pattern of market manipulation and tariff violations involving numerous sellers in the ISO and PX  
12 markets.

13           64. The California Parties' discovery uncovered evidence that certain sellers in the market  
14 engaged in various forms of market manipulation and tariff violations that created the false  
15 perception of scarcity in the market and that drove up market prices. For example, sellers practiced  
16 physical and economic withholding of generation. This allowed suppliers to increase the price of  
17 electricity by keeping large amounts of electric power off the market. Physical withholding  
18 occurred when a generator refused to place a supply bid with the PX even when it had power  
19 available, or when it falsely reported an outage at a generating plant. Economic withholding  
20 occurred when a seller placed high bids unrelated to its generation costs to create the false  
21 appearance of scarcity, and so to drive prices higher than true competitive levels would have  
22 provided.

23           65. Certain sellers in the market engaged in other gaming strategies — the infamous "Fat  
24 Boy," "Death Star," and "Ricochet" schemes, among others — and often used other market  
25 participants to assist them with these gaming strategies. Notes and tapes of telephone conversations  
26 among energy traders revealed discussions about traders' submission of "fake load" in the market,  
27 about their intent to "push the price up and keep the price up," and about their implementation of

1 bidding strategies that would signal other market participants to withhold electric power from the  
2 market through physical or economic means.

3 66. Once this information was available, it became evident that market fraud and  
4 manipulation were significant causes of the California Energy Crisis. Since the end of the  
5 California Energy Crisis, numerous energy traders and executives have pled guilty to, or been  
6 indicted on, criminal charges, and many have specifically admitted to market manipulation  
7 activities.

8 67. Because all sellers received the same market-clearing prices set by the ISO and PX  
9 auctions, the artificially inflated prices created windfall profits for all sellers in the ISO and PX  
10 markets, benefiting even those sellers that did not engage in market manipulation. FERC's July 25,  
11 2001 Order and subsequent orders have ameliorated the effects of market manipulation on the  
12 transactions that they addressed by correcting the pricing under the ISO and PX Tariffs to reduce  
13 the prices that all sellers were authorized to retain for those sales.

#### 14 **The Ninth Circuit's *Bonneville* Decision**

15 68. FERC ruled in a series of decisions that its power to enforce sellers' payment of  
16 refunds under the FPA extended to governmental entities and rural electric cooperatives, such as the  
17 Governmental Entities. Certain of the Governmental Entities appealed this decision to the Ninth  
18 Circuit. On September 6, 2005, the Ninth Circuit ruled that FERC lacked statutory authority  
19 directly to enforce the Governmental Entities' refund obligations under the ISO and PX Tariffs.  
20 *Bonneville Power Admin. v. Federal Energy Regulatory Comm'n*, 422 F.3d 908 (9th Cir. 2005).  
21 The Court noted, however, that market participants had, as an alternative remedy, the ability to  
22 bring claims in court directly against the Governmental Entities to enforce the contractual  
23 obligations created by the operative tariffs and related agreements. *Bonneville Power Admin.*, 422  
24 F.3d at 925-926.

25 69. The Ninth Circuit observed that the Governmental Entities' agreement to abide by the  
26 ISO and PX Tariffs "[serves] to demonstrate that the remedy, if any, may rest in a contract action,  
27 not a refund action. Such an approach is not novel . . . ." *id.* at 925 (citing *Alliant Energy v. Neb.*  
28 *Pub. Power Dist.*, 347 F.3d 1046, at 1050-51 (8th Cir. 2003)). The Ninth Circuit quoted with



1 approval the Eighth Circuit's holding in *Alliant Energy* that "[w]hen a contract provides that its  
2 terms are subject to a regulatory body, all parties to that contract are bound by the actions of the  
3 regulatory body . . . . As a result, we are not enforcing the FERC order; instead, we are enforcing  
4 an agreement, which [the Governmental Entity] freely entered.") *Bonneville*, 422 F.3d at 926  
5 (quoting *Alliant Energy*, 347 F.3d at 1050). The Ninth Circuit has not yet issued the mandate in the  
6 *Bonneville* proceeding.

7 70. In this Complaint, the California Parties seek to enforce in this Court the  
8 Governmental Entities' contractual obligations to refund the amounts they charged in excess of the  
9 lawful corrected rates, as suggested by the Ninth Circuit in its *Bonneville* decision.

10 71. On December 2, 2005, without conceding that they were required to take such action  
11 at that time, the California Parties complied with state claims presentment statutes by serving copies  
12 of written claims on all California defendants and on the Salt River Project, providing them with  
13 notice of the California Parties' present claims for relief. Cal. Gov't Code § 910; Ariz. Rev. Stat.  
14 12-821-01. The Arizona claims presentment statutes do not apply to RUS-financed cooperatives;  
15 consequently, no notice of claim was presented to AEPCO. On the same date, the California  
16 Parties also served claims on EWEB, the City of Seattle, and Grant County PUD, in light of  
17 ambiguity as to whether the California Parties were required to present these claims under Oregon  
18 and Washington law. Ore. Rev. Stat. § 30.275; Rev. Code. Wash. 4.96.010-020.

19 72. The waiting periods prescribed by the applicable claims presentment statutes have  
20 elapsed. The Cities of Anaheim, Azusa, Banning, Burbank, Glendale, Pasadena, Riverside, Santa  
21 Clara, Los Angeles, Seattle and Vernon, and the LADWP, Modesto Irrigation District, Turlock  
22 Irrigation District, the Northern California Power Agency, and the Sacramento Municipal Utility  
23 District have denied the California Parties' claims. The California Parties' claims presented to  
24 Grant County and Salt River Project are deemed denied by operation of law because the statutory  
25 period for a decision by these entities has expired. The California Parties' claims against EWEB  
26 remain unsatisfied, and Oregon law does not require any formal action by EWEB prior to  
27 commencement of suit.



1           73. Prior to the Ninth Circuit's *Bonneville* order, which was issued on September 6, 2005,  
2 FERC asserted and exercised exclusive jurisdiction over claims for refunds from all sellers,  
3 including the Governmental Entities. Thus, in accordance with the July 25, 2001 Order and under  
4 FERC's rulings and Ninth Circuit authority, the FERC proceedings were the exclusive forum for  
5 the California Parties' refund claims, including claims for refunds from the Governmental Entities.  
6 No claim accrued and no limitations period commenced to run until September 6, 2005, when the  
7 Ninth Circuit ruled, for the first time, that FERC did not, in fact, have jurisdiction to enforce the  
8 refund liability of the Governmental Entities.

9           74. Alternatively, to the extent that any limitations period had commenced to run on the  
10 California Parties' right to sue in a court to enforce the Governmental Entities' refund obligations  
11 prior to the *Bonneville* order, the limitations period was tolled, at a minimum, from the time the  
12 California Parties initiated refund proceedings with FERC on August 2, 2000, through the time the  
13 Ninth Circuit issued its decision in *Bonneville* on September 6, 2005.

14           75. This lawsuit is based on the same facts that were at issue in the Remedy Proceeding  
15 and in the various Ninth Circuit appeals from the Remedy Proceeding: the sellers' (including the  
16 Governmental Entities') receipt and retention of rates for sales of wholesale electric power in the  
17 ISO and PX markets that are unlawful and unauthorized under the ISO and PX Tariffs. The  
18 California Parties acted promptly, reasonably, and in good faith in seeking relief from FERC  
19 against all sellers in the California markets, including the Governmental Entities. The  
20 Governmental Entities were active parties to the FERC Remedy Proceeding, and have had notice  
21 throughout the FERC proceedings of the need to gather and preserve relevant evidence. Following  
22 the Ninth Circuit's *Bonneville* decision, the California Parties acted expeditiously to present claims  
23 to the Governmental Entities and to commence this action.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**Breach of Contract**

76. The California Parties incorporate by reference the allegations set forth above.

77. All sellers in the ISO and PX markets, including the Governmental Entities, were charged with knowledge that the market-clearing prices, and the formulas and market rules that set the prices, were subject to correction if they were found by FERC to contravene the requirements of the FPA. By voluntarily choosing to sell electric power at wholesale in the ISO and PX markets, and/or by executing ISO Scheduling Coordinator Agreements, PX Participation Agreements, or other agreements with the ISO or PX, the Governmental Entities contractually agreed to be bound by the provisions of the ISO and PX Tariffs, which incorporate FERC's power to correct prices that it determines to be unjust, unreasonable, or unlawful.

78. Pursuant to its authority under the FPA, FERC revised the tariffs and corrected the prices that market participants were entitled to receive for their sales during the Refund Period by adopting the MMCP. Upon FERC's correction of the rates charged and received by sellers, including the Governmental Entities, in the ISO and PX markets, the corrected rates became the only lawful and authorized rates for those sales under the applicable tariffs.

79. The Governmental Entities are now contractually obligated to reimburse the California IOUs for the difference between the rates that the Governmental Entities initially charged for their sales in the ISO and PX markets and the MMCP. The Governmental Entities have refused to refund, and continue to refuse to refund, to the California IOUs the amounts that they received in excess of the MMCP during the Refund Period.

80. The Governmental Entities' conduct constitutes a breach of their contractual obligations to the California IOUs, entitling the California IOUs to judgment against each Governmental Entity for all amounts that each Governmental Entity received in excess of the lawful rate attributable to its wholesale sales of electric power to the California IOUs in the ISO and PX markets during the Refund Period, plus associated interest.

1 **SECOND CLAIM**

2 **Anticipatory Breach of Contract**

3 81. The California Parties incorporate by reference the allegations set forth above.

4 82. This Claim is pleaded in the alternative to the First Claim. If it is determined that the  
5 date by which the Governmental Entities would be obligated under the applicable contracts to  
6 refund to the California IOUs the amounts that they received in excess of the MMCP during the  
7 Refund Period has not yet occurred, the Governmental Entities have nonetheless become obligated  
8 to make such refunds immediately, and in advance of such date, because they have wrongfully  
9 denied and repudiated any legal duty to so repay the California IOUs. Specifically, the  
10 Governmental Entities have repudiated, in the FERC proceedings, in appeals from FERC orders,  
11 and by their denial of the California IOUs' duly-presented claims, their contractual obligations to  
12 the California IOUs, including their obligation to comply with the revised Tariff provisions by  
13 refunding their unlawful overcharges.

14 83. The Governmental Entities' conduct constitutes an anticipatory breach of their  
15 contractual obligations to the California IOUs, entitling the California IOUs to judgment against  
16 each Governmental Entity for all amounts that each Governmental Entity received in excess of the  
17 lawful rate attributable to its wholesale sales of electric power to the California IOUs in the ISO and  
18 PX markets during the Refund Period, plus associated interest.

19 **THIRD CLAIM**

20 **Unjust Enrichment Arising from Contract**

21 84. The California Parties incorporate by reference the allegations set forth above.

22 85. By accepting and retaining prices that are now unlawful under the ISO and PX Tariffs,  
23 and by denying their obligations to refund or credit overcharges to buyers in the ISO and PX  
24 markets, the Governmental Entities have unjustly enriched themselves at the expense of market  
25 purchasers, including the California IOUs and, ultimately, the IOUs' customers, who paid inflated  
26 and unlawful prices for electric power. The Governmental Entities' retention of those unlawful  
27 prices violates their contractual duty to abide by the provisions of the ISO and PX Tariffs.  
28

1 86. In addition, the Governmental Entities' retention of prices in excess of the MMCP that  
2 are unauthorized under the tariffs is inequitable and unfair: For transactions where they were  
3 buyers, the Governmental Entities are seeking refunds from other sellers of prices they paid in  
4 excess of the lawful, corrected rate. By contrast, for transactions where they were sellers, the  
5 Governmental Entities deny any obligation to pay refunds, and seek to retain the windfall benefits  
6 of the original unlawful prices they charged other market participants.

7 87. The Governmental Entities have been unfairly enriched, entitling the California IOUs  
8 to judgment against each Governmental Entity for all amounts that each Governmental Entity  
9 received in excess of the lawful rate attributable to its wholesale sales of electric power to  
10 California IOUs in the ISO and the PX markets during the Refund Period, plus associated interest.

11 **FOURTH CLAIM**

12 **Money Had and Received**

13 88. The California Parties incorporate by reference the allegations set forth above.  
14

15 89. By accepting and retaining prices that are unlawful under the ISO and PX Tariffs, and  
16 by denying their obligations to refund or credit overcharges to those buyers in the ISO and PX  
17 markets, the Governmental Entities have accepted the benefit of illegal profits that rightfully belong  
18 to purchasers in the ISO and PX markets, including the California IOUs, that were harmed by the  
19 unlawful prices. Any overcharges received by a Governmental Entity from the California IOUs as  
20 a result of unlawful prices rightfully belong to and should be returned to the California IOUs.

21 90. The Governmental Entities are accordingly liable to the California IOUs for all  
22 amounts each Governmental Entity received in excess of the lawful rate attributable to its wholesale  
23 sales of electric power to the California IOUs in the ISO and PX markets during the Refund Period,  
24 plus associated interest.

25 **FIFTH CLAIM**

26 **Declaratory Relief (Refund Period)**

27 91. The California Parties incorporate by reference the allegations set forth above.  
28





**EIGHTH CLAIM**

**Declaratory Relief (Contractual and Equitable Indemnification)**

97. The California Parties incorporate by reference the allegations set forth above.

98. Because the ISO and PX are revenue-neutral entities, the Governmental Entities' refusal to honor their repayment obligations will result in a shortfall of funds needed to settle the accounts of ISO and PX participants. Under the terms of the ISO and PX Tariffs, other market participants, including the California IOUs, may therefore be required to indemnify the ISO and PX for the resulting shortfall.

99. Any reductions in the California IOUs' accounts to indemnify the ISO and PX for the Governmental Entities' refusal to honor their repayment obligations will constitute amounts due and owing by the Governmental Entities, as ISO Debtors and PX Debtors, to the California IOUs as ISO Creditors and PX Creditors. The California IOUs, as market participants, are entitled under the ISO and PX Tariffs to bring proceedings directly against the Governmental Entities to recover these amounts owed. A controversy has arisen in that the Governmental Entities have denied that they have any obligation to disgorge amounts they received in excess of the lawful rate.

100. The California IOUs seek a declaratory judgment that the Governmental Entities will be liable to the California IOUs on grounds of contractual and equitable indemnification for any amount assessed against the California IOUs' accounts due to the Governmental Entities' refusal to honor their repayment obligations, as well as for all additional costs and expenses incurred by the California IOUs as a result of the Governmental Entities' refusal to honor their repayment obligations.

**NINTH CLAIM**

**Declaratory Relief (ISO and PX Accounts)**

101. The California Parties incorporate by reference the allegations set forth above.

102. This Claim is pleaded in the alternative to the First through Eighth Claims.

103. A controversy has arisen in that the Governmental Entities have denied that they have any liability to the California IOUs to refund their overcharges associated with their sales during the



1 Refund Period, and that they will have any liability to the California IOUs to refund their  
2 overcharges associated with Energy Exchanges and Multi-Day Sales and sales during the Summer  
3 Period if FERC corrects the prices for those transactions. The California Parties seek a declaration  
4 that the Governmental Entities are contractually obligated to permit their accounts at the ISO and  
5 PX to be adjusted to reflect all pricing changes resulting from FERC's determination of the  
6 corrected, maximum rates under the ISO and PX Tariffs and the recalculation by the ISO and PX  
7 pursuant to FERC's direction of the prices charged under the ISO and PX tariffs during the relevant  
8 time periods, and are contractually obligated to pay any refunds and to otherwise honor the invoices  
9 reflecting the refunds associated with all affected transactions.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the California IOUs pray for relief against each Governmental Entity as  
12 follows:

- 13 1. For judgment against each of the Governmental Entities for all amounts that each  
14 Governmental Entity charged in excess of the lawful rate attributable to its sales to  
15 the California IOUs in the ISO and PX markets during the Refund Period;
- 16 2. For a judgment declaring that the California IOUs are entitled to recover from each  
17 Governmental Entity all amounts that each Governmental Entity charged in excess  
18 of the lawful rate attributable to its sales to the California IOUs in the ISO and PX  
19 markets during the Refund Period;
- 20 3. For a judgment declaring that at such time as FERC finds that the rates charged by  
21 sellers for energy exchanges or multi-day sales during the Refund Period were  
22 unlawful, the California IOUs will be entitled to recover from each Governmental  
23 Entity the difference between the rates that each Governmental Entity charged and  
24 the lawful rates as ultimately determined by FERC;
- 25 4. For a judgment declaring that at such time as FERC finds that the rates charged by  
26 sellers during the Summer Period were unlawful, the California IOUs will be  
27 entitled to recover from each Governmental Entity the difference between the rates

1 each Governmental Entity charged and the lawful rates as ultimately determined by  
2 FERC;

- 3 5. For a judgment declaring that at such time as the Governmental Entities' refusal to  
4 honor their repayment obligations results in a shortfall of funds necessary to settle  
5 the California IOUs' accounts, each Governmental Entity will be liable to the  
6 California IOUs on grounds of contractual and equitable indemnification for any  
7 amount assessed against the California IOUs' accounts;
- 8 6. In the alternative, for a judgment declaring that the Governmental Entities are  
9 contractually obligated to permit their accounts at the ISO and PX to be adjusted to  
10 reflect all pricing changes resulting from FERC's determination of the corrected,  
11 maximum rates under the ISO and PX Tariffs and the recalculation by the ISO and  
12 PX pursuant to FERC's direction of the prices charged under the ISO and PX tariffs  
13 during the relevant time periods, and are contractually obligated to pay any refunds  
14 and to otherwise honor the invoices reflecting the refunds associated with such  
15 transactions;
- 16 7. For an award of pre-judgment and post-judgment interest;
- 17 8. For recoverable costs of suit and other expenses; and
- 18 9. For such further relief as the Court may deem just and proper.
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